IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 97-1546

VERNA EMERY, on behalf of herself and all others similarly situated,

Plaintiff-Appellant,

v.

AMERICAN GENERAL FINANCE, INC., AMERICAN GENERAL FINANCE CORPORATION, and JOHN DOES 1-10,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 94 C 5181—**Robert W. Gettleman**, *Judge.*

ARGUED DECEMBER 9, 1997—DECIDED JANUARY 28, 1998

Before POSNER, *Chief Judge*, and BAUER and COFFEY, *Circuit Judges.*

POSNER, *Chief Judge.* This is the second coming of a case that we remanded to the district court, 71 F.3d 1343 (7th Cir. 1995), which had granted a motion to dismiss the case, a class action suit under RICO, 18 U.S.C. §§ 1961 *et seq.*, for failure to state a claim, on the ground that the only predicate act alleged, a mail fraud, was not fraudulent. The alleged fraud was "loan flipping," in which a lender offers to refinance the borrower's existing loan on advantageous terms, concealing the fact that the terms are in fact highly

disadvantageous. We held that the letter that a subsidiary of one of the corporate defendants (we'll refer to the corporate defendants in the aggregate as AGF) mailed to the named plaintiff, Emery, was sufficiently misleading to make out, in conjunction with the allegations of the complaint, a violation of the mail fraud statute. And so we reversed. But we noted that the RICO statute requires that a plaintiff prove at least two separate criminal acts, and that the complaint in this case, while alleging that the defendants had perpetrated the same fraud on other customers, gave no particulars, and so fell afoul of Fed. R. Civ. P. 9(b). But we thought that the suit should not be dismissed without giving the plaintiff a chance to replead, and on remand the district judge did this. The plaintiff filed a first amended complaint, which the judge again dismissed, and a second amended complaint, which he also dismissed, and this time he dismissed the suit and the plaintiff has appealed.

The judge ruled that the second amended complaint still failed to comply with Rule 9(b) and also failed to allege the conduct of an enterprise's activity through a pattern of racketeering, 18 U.S.C. § 1962(c), consisting of mail fraud. We think both grounds for the dismissal of the suit are correct, and while it is possible that the deficiencies of the complaint could be cured by further pleading, the plaintiff has had three chances over the course of three years to state a claim and the district judge was not required to give her another chance. *General Electric Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1085 (7th Cir. 1997); *Word of Faith World Outreach Center Church, Inc. v. Sawyer*, 90 F.3d 118, 124 (5th Cir. 1996).

The second amended complaint names three more "victims." Unfortunately, the plaintiff's lawyer has not been able to find the letters that AGF sent to two of them and as to the third, the only solicitation the lawyer has come up with is an innocuous couple of sentences in the monthly loan statement that AGF sent this "victim"; moreover, as the statement carries the same date as the refinancing, it

could not have caused this "victim" any harm. All we know about the other two victims is that they were borrowers from AGF who refinanced their loans on disadvantageous terms at some unknown time after receiving letters "substantially similar" to the one that the named plaintiff received. The letters, mailed more than a year after the letter to Emery that kicked off this suit (indeed mailed after the suit was commenced), could be "substantially similar" yet not misleading or actionable, especially as there is no allegation that the recipients were unsophisticated, a factor emphasized in our previous opinion.

We are mindful of the difficulty that a plaintiff's lawyer can encounter in trying to gather enough evidence of multiple frauds in advance of filing suit to satisfy the requirements of Rule 9(b), especially in a RICO fraud case, where the plaintiff needs to allege more than one fraud, and thus satisfy Rule 9(b) as it were twice. The two additional victims received their solicitation letters years ago and obviously didn't keep them; and it is apparent that neither do they remember the contents of the letters with any specificity. No doubt other customers of AGF received the same or materially the same letter as Emery; but whether they were deceived is another matter, and one on which the complaint sheds no light. If when this suit was filed in 1994 the plaintiff's lawyer had appreciated the need to plead two mail frauds with the particularity required by Rule 9(b), as she should have, she could have scouted around and found other recipients of the form letter. Having waited three years, she may have put herself in a position where it simply was too late to satisfy the conjoint requirements of RICO and 9(b). In any event, the allegations regarding the two additional victims, lacking as they do any identification of the allegedly fraudulent instruments, do not satisfy the requirements of Rule 9(b). *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1328-29 (7th Cir. 1994); *Graue Mill Development Corp. v. Colonial Bank & Trust Co.*,

927 F.2d 988, 992-93 (7th Cir. 1991); *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997).

We don't want to create a Catch-22 situation in which a complaint is dismissed because of the plaintiff's inability to obtain essential information without pretrial discovery (normally of the defendant, because the essential information is in his possession and he will not reveal it voluntarily) that she could not conduct before filing the complaint. But Rule 9(b) is relaxed upon a showing of such inability. *Katz v. Household Int'l, Inc.*, 91 F.3d 1036, 1040 (7th Cir. 1996); *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1418 (3d Cir. 1997); *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1279 n. 3 (D.C. Cir. 1994); *Devaney v. Chester*, 813 F.2d 566, 569 (2d Cir. 1987). In fact the plaintiff in this case attempted to conduct discovery after she filed her initial complaint, and discovery was stayed upon the defendants' motion. Rule 9(b) is satisfied by a showing that further particulars of the alleged fraud could not have been obtained without discovery. The plaintiff did not make that showing. Her lawyer admits that she didn't explore the possibility of obtaining from the defendants or other sources, without discovery, the identity of other recipients of the form letter that her client received, and as we said her failure at the outset to appreciate the requirements of Rule 9(b) may in conjunction with the passage of time have doomed any efforts to find a second victim of the fraud.

Several months ago we decided *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225 (7th Cir. 1997), another RICO case brought by the law firm that represents the plaintiff in this case. The misunderstanding of RICO that defeated the firm there persists in the present appeal. The plaintiff's lawyer continues despite *Fitzgerald* to believe that the requirement in a case such as this of proof that defendants conducted the affairs of an enterprise through a pattern of racketeering activity, 18 U.S.C. § 1962(c), is satisfied merely by showing that the pattern of predicate acts (the mail frauds,

in this case) were committed by a firm that has agents or affiliates. That is not enough. The firm must be shown to use its agents or affiliates in a way that bears at least a family resemblance to the paradigmatic RICO case in which a criminal obtains control of a legitimate (or legitimate-appearing) firm and uses the firm as the instrument of his criminality.

The second amended complaint alleges that American General Corporation is a holding company and its wholly owned subsidiary, American General Finance Corporation (AGFC), is engaged in the consumer lending business. AGFC in turn is the sole owner of defendant American General Finance, Inc. (AGFI), an Illinois corporation that conducts AGFC's business in Illinois. It was the manager of one of AGFI's branch offices who wrote the misleading letter to Emery. The individual defendants, John Does 1 through 10, are alleged to be "the individuals responsible for devising the policies used [by] each" of the defendants. The holding company is alleged to have delegated responsibility for the preparation and approval of solicitations to AGFC, which "devised the [fraudulent] scheme and directed its subsidiaries [presumably including AGFI] to implement it." The RICO enterprise, variously described, is essentially the corporate group; and AGFC and the Does are alleged to have conducted the affairs of the enterprise through a pattern of mail fraud.

Begin with AGFC. Its alleged act of devising a fraudulent solicitation that AGFI, its Illinois subsidiary (and perhaps its other subsidiaries in other states), distributed cannot be regarded as conducting the business of the AGF group through a pattern of fraud. Whether AGFC operated through divisions, which would make the branch manager of AGFI who mailed the misleading letter to Emery an employee of AGFC and would therefore preclude a finding of a RICO enterprise on anyone's view, *Fitzgerald v. Chrysler Corp., supra*, 116 F.3d at 226; *Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055, 1063 (2d Cir. 1996), or through wholly owned

subsidiaries is a difference unrelated to any goal or policy of RICO. *Id.* at 1064; *Fitzgerald v. Chrysler Corp., supra,* 116 F.3d at 227; *Compagnie de Reassurance d'Ile de France v. New England Reinsurance Corp.,* 57 F.3d 56, 92 (1st Cir. 1995). The parent would be exercising power that is inherent in its ownership of wholly owned subsidiaries. There is no allegation that by using subsidiaries rather than divisions the AGF group somehow made it easier to commit or conceal the fraud of which the plaintiff complains.

It would be different if as in *Haroco, Inc. v. American National Bank & Trust Co.,* 747 F.2d 384 (7th Cir. 1984), aff'd on other grounds, 473 U.S. 606 (1985), criminals took over a corporate subsidiary which then managed to wrest control of the parent and use the parent as an instrument for further criminal activities. That would be a case of magnifying the powers of the criminal by seizing control of a legitimate organization. Which brings us to John Does 1 through 10. The Third Circuit, relying in part on our decision in *McCullough v. Suter,* 757 F.2d 142, 144 (7th Cir. 1985), has held that an allegation that corporate officers or employees are using their corporation to perpetrate the frauds or other predicate acts satisfies the "conduct the affairs through" requirement. *Jaguar Cars, Inc. v. Royal Oaks Motor Car Co.,* 46 F.3d 258, 267-69 (3d Cir. 1995). However, it is one thing to allege that criminals are using a corporation to commit crimes, a natural meaning to impress on the statutory language of conducting an enterprise's affairs through a pattern of racketeering activity, and another to assert merely that since the corporation's unlawful scheme must have been hatched by someone connected to the corporation, the scheme (provided it satisfies the statute's pattern requirement) violates RICO. Corporations can act only through natural persons, so the approach that we are criticizing (and that we do not attribute to the Third Circuit, since *Jaguar Cars* was a case in which the defendants controlled the corporation, see 46 F.3d at 261) would eliminate any separate function for the "conducts the

affairs of through" language of the statute if the perpetrator is a firm. If the scheme is actually hatched or directed by the board of directors or some other controlling group, whether the control is de facto or de jure, it will come close enough to the paradigmatic RICO case to pass muster under the "family resemblance" test that we applied in the *Fitzgerald* case. That is the teaching of *Jaguar Cars* but is not alleged here. The plaintiffs' inability to identify any actual corporate officers or employees as responsible parties shows that she is trying to truncate the statute in the manner that strikes us as inadmissible.

We are mindful of the cases that hold or imply that the RICO defendant need not be an owner or even a member of top management in order to be guilty of conducting the affairs of an enterprise through a pattern of racketeering activity, and even more clearly to be guilty of *participating* in such conducting, which is also a violation. *Reves v. Ernst & Young*, 507 U.S. 170 (1993); *MCM Partners, Inc. v. Andrews-Bartlett & Associates, Inc.*, 62 F.3d 967, 977-79 (7th Cir. 1995); *United States v. Oreto*, 37 F.3d 739, 750-51 (1st Cir. 1994). But those cases are different. In *Reves* the issue was how much involvement in a corporation's affairs a corporate *outsider* (an accounting firm, in that case) had to have in order to be deemed a participant in the conduct of those affairs. In *MCM* and *Oreto* the "enterprise" was not a corporation or other normal firm but an "association in fact," which is a polite name for a criminal gang or ring. None of the cases adopts the position for which the plaintiff here is contending—that if a corporation engages in a pattern of racketeering activity, RICO liability falls on whoever in the corporation committed the acts constituting the illegal activity. That position would treat the corporation as an enterprise distinct from its employees, which the cases that we cited earlier forbid.

What *is* distinct from the corporation is the people who control it, or perhaps control even just a part of it, for we often speak of a "control group" as something different

from the corporation controlled; and there is no contradiction or even strain in talking about the "owner" of a "corporation" as separate entities. And so the result in *Jaguar Cars* was correct. But in this case the individual defendants are not alleged to control the corporation alleged to have committed the frauds that constitute the RICO violation, or a corporate division or other identifiable branch or unit that they somehow carved out from the legitimate corporate hierarchy and made their own little bailiwick. They are alleged merely to have devised the fraud—they might, for all that appears, be marketing personnel whose job is to think up, but not direct or implement, clever ideas for getting more loans. There can be no corporate fraud without a deviser, that is, without a human inventor, so that if "devisers" are RICO violators there would be a RICO violation whenever a corporation engaged in a pattern of racketeering activity—and thus automatically—even though the statute makes the conduct of or participation in the corporation's affairs a separate element of liability.

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, IL 60604

February 24, 1998

Before

Hon. Richard A. Posner, Chief Judge
Hon. William J. Bauer, Circuit Judge
Hon. John L. Coffey, Circuit Judge

VERNA EMERY, on behalf of herself and all others similarly situated, *Plaintiff-Appellant,*	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 97-1546 v.	)	
AMERICAN GENERAL FINANCE, INC., AMERICAN GENERAL FINANCE CORPORATION, and JOHN DOES 1-10, *Defendants-Appellees.*	)	No. 94 C 5181 Robert W. Gettleman, *Judge.*

ORDER

On February 11, 1998, plaintiff-appellant filed a petition for rehearing with a suggestion for rehearing en banc. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.

Hon. Walter J. Cummings did not participate in the consideration of the petition.

App. 10

[Dated February 18, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VERNA EMERY, on behalf of herself and all others similarly situated, Plaintiff,	)	No. 94 C 5181
v.	)	
	)	Judge
AMERICAN GENERAL FINANCE, INC. AMERICAN GENERAL FINANCE CORP. and JOHN DOES 1-10, Defendants.	)	Robert W. Gettleman

MEMORANDUM OPINION AND ORDER

Plaintiff Verna Emery has brought a four count putative class action second amended complaint against defendants American General Finance, Inc. ("AGFI"), American General Finance Corp. ("AGFC") and John Does Nos. 1-10, complaining of certain practices (denominated by plaintiff as "loan flipping") concerning defendants' solicitation of loans from existing customers. Count I alleges a violation of the Racketeer Influence Corrupt and Corrupt Organization Act (RICO), 18 U.S.C. § 1961, *et seq.*, against AGFC; Count II alleges a RICO violation against AGFI; Count III alleges RICO violations against John Does Nos. 1-10; and Count IV alleges that AGFI and AGFC violated the consumer fraud statutes of "some or all" of the fifty states and the District of Columbia. Defendants' have moved to dismiss all counts for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). For the

reasons set forth below, defendants' motion is granted, and this suit is dismissed with prejudice.

BACKGROUND

Plaintiff originally brought this action as a one count RICO complaint against AGFI. This court dismissed that suit, concluding that absent a duty to disclose, AGFI could not be found liable for mail fraud. *Emery v. American General Finance, Inc.*, 873 F. Supp. 1116 (N.D. Ill. 1995). The Seventh Circuit reversed, holding that the complaint adequately alleged an intentional half-truth. *Emery v. AGFI*, 71 F.3d 1343, 1348 (7th Cir. 1995). The court also held, however, that the complaint failed to plead a pattern of racketeering activity because it pleaded only one incident of mail fraud particularly, and then alleged that defendant did the same thing to others.

On remand, plaintiff filed an amended complaint, wholly restructuring her lawsuit. The amended complaint named AGFC as the RICO defendant and, seeking to cure the lack of specific allegations of a pattern of racketeering activities, added additional allegations of two other AGFI customers.

On August 28, 1996, this court dismissed plaintiff's amended complaint with prejudice because it failed to allege a RICO enterprise separate and distinct from the RICO person, improperly sought to impose *respondeat superior* liability, and failed to allege a pattern of racketeering activity. *Emery v. AGFI*, 938 F. Supp. 495 (N.D. Ill. 1996). With respect to racketeering activity, this court held that the amended complaint failed to allege that either of the two AGFI customers added to cure the pat-

tern deficiencies in the original complaint ever received a misleading solicitation through the mail, or even made their loan payments through the mail. Therefore, the amended complaint failed to allege more than one instance of mail fraud and failed to allege a pattern of racketeering activity. *Id.*

Plaintiff sought leave to file a second amended complaint, asserting that she could cure all deficiencies noted by this court when it dismissed the amended complaint. Based on plaintiff's counsel's assurances, the court granted plaintiff leave to file a second amended complaint. The second amended complaint once again restructures the lawsuit. It now names both AGFI and AGFC as RICO defendants as well as ten John Doe defendants. It attempts to cure the enterprise allegation deficiencies by eliminating certain factual allegations on which this court relied in determining that plaintiff had failed to allege an enterprise separate and distinct from the RICO defendant. With respect to racketeering activity, plaintiff has alleged, albeit on information and belief, that the additional customers received a solicitation similar to the one plaintiff received, and in response to that solicitation went to AGFI for another loan. Plaintiff has also added an allegation about another customer who received a different solicitation with her monthly statement.

Not surprisingly, the second amended complaint was met with another motion to dismiss, asserting that plaintiff has failed to correct any of the earlier deficiencies. This court agrees.

DISCUSSION[1]

Defendants once again assert that the second amended complaint fails to: (1) satisfy RICO's requirement that the RICO enterprise be separate and distinct from the RICO person; (2) plead a pattern of racketeering activities; (3) plead fraud with particularity, and (4) allege causation. Because the court agrees that the second amended complaint fails to plead adequately a pattern of racketeering activity, and fails to plead fraud with particularity, defendants' motion to dismiss is granted.

As held by the Seventh Circuit in this case, to prevail on her RICO counts, plaintiff must plead and prove a pattern of racketeering activity consisting of at least two criminal acts. Where, as here, the acts alleged are fraud, the circumstances of each act must be pleaded with particularity as required by Fed. R. Civ. P. 9(b). *Emery*, 71 F.3d at 1348. As stated earlier, to comply with this directive, in her amended complaint plaintiff added allegations relating to two other customers, Tawanna Gill and Tonia Carr. The amended complaint failed to allege, however, that either Ms. Gill or Ms. Carr received a misleading solicitation through the mail, or that either made loan payments through the mail. Accordingly, this court concluded that the amended complaint failed to allege mail fraud with respect to Ms. Gill or Ms. Carr, leaving plaintiff's amended complaint with the exact deficiencies identified by the Seventh Circuit.

---

[1] A complete statement of the facts alleged in this case and a copy of the flyer sent to plaintiff can be found in this court's original opinion, *Emery*, 873 F. Supp. 1116, and the Seventh Circuit opinion, 71 F.3d 1343.

To address this problem, plaintiff has made two additions to her second amended complaint. With respect to Gill and Carr, plaintiff has alleged "on information and belief" that each received a solicitation substantially similar to the one received by plaintiff. As in her first amended complaint, however, she has not that either Gill or Carr received any such solicitation through the mail, or that either made loan payments through the mail. Without a use of the mail, the allegations cannot support a claim or mail fraud. *Associates in Adolescent Psychiatry, S.C. v. Home life Ins. Co.*, 751 F. Supp. 727 (N.D. Ill. 1990, aff'd 941 F.2d 561 (7th Cir. 1991). Additionally, the allegations with respect to Carr and Gill are insufficient under Rule 9(b), which requires fraud to be pleaded with particularity. Allegations upon information and belief, such as plaintiff has alleged here, are insufficient to allege fraud under Rule 9(b), even if the facts are inaccessible to the plaintiff, unless the plaintiff states the grounds for her suspicions. *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 923 (7th Cir. 1992). Here, plaintiff has not suggested that the facts concerning the nature of the solicitation or the use of the mails in sending the solicitation or making payments are not accessible to her, nor has she stated the grounds for her suspicion that the mails were used. As noted in *Uni*Quality*, 974 F.2d at 923:

> "Rule 9(b)'s particularity requirement serves an important purpose. Accusations of fraud can seriously harm a business. This is especially so in RICO cases where those accusations of fraud lead to the probably more damaging accusation that the business engaged in 'racketeering.' Rule 9(b) insures that a plaintiff have some basis for his accusations of fraud before

> making those accusations and thus discourages people from including such accusations in complaints simply to gain leverage for settlement or for other ulterior purposes."

Here, plaintiff has alleged on information and belief that Gill and Carr received a solicitation substantially similar to the allegedly misleading solicitation received by plaintiff. Thus, all plaintiff has done is state that she suspects Carr and Gill received something misleading, without identifying what that something is. This hardly complies with the purpose of Rule 9(b), and certainly is insufficient to allege a pattern of racketeering activity.

Plaintiff has also added an allegation that a customer named Bessie Chalmers, again "on information and belief," responded to a solicitation in her monthly statement which provided:

> "YOU'RE INVITED TO BLUE RIBBON DAYS IN APRIL. PLEASE STOP BY AND SEE US. WE'RE SHOWING OUR APPRECIATION FOR ALL OF OUR BLUE RIBBON CUSTOMERS THROUGHOUT APRIL WITH SPECIAL EVENTS AND BLUE RIBBON SERVICE. CALL US TODAY AT (312) 581-0250 AND WE COULD HAVE YOUR LOAN APPROVED IN LESS THAN AN HOUR."

Plaintiff alleges that the logical inference from this notice is that Chalmers and others would receive additional money by an additional loan or an addition to the existing loan, not by "flipping" the current loan.

Plaintiff does not allege that this notice is deceptive or misleading in any way (unlike the solicitation letter she received which she does allege to be both misleading and deceptive). Nor does she allege that defendant was not

holding a special event, or that the purpose of the notice was simply to "rip her off." Emery, 71 F.3d at 1347. Nor does the complaint allege that Ms. Chalmers is a financially naive working class borrower who does not read truth-in-lending forms intelligently, or that defendant knew this and targeted her as such. Id. Indeed, the complaint does not allege, or even suggest, that such notice was not sent out on every monthly statement, regardless of the competency of the recipient. Thus, it is unlikely that the mailing to Ms. Chalmers could support a claim for mail fraud even under the broad view of the majority in *Emery*.

There are other, equally serious problems with plaintiff's reliance on the "solicitation" contained in Chalmer's monthly statement to support plaintiff's allegations of a "pattern of racketeering activity." The complaint alleges, again "on information and belief," that Chalmers responded to the solicitation in her monthly statement which was attached to the complaint as an exhibit. The exhibit, however, is dated March 29, 1995. The new "loan" that Chalmers allegedly obtained in response to the exhibit is also dated March 29, 1995. Indeed, the monthly statement that contained the solicitation also contains a summary of the new loan. Thus, as defendants correctly argue, the alleged solicitation was mailed after Chalmers entered the new loan, and could not have influenced Chalmers's decision to obtain that loan.

In response to this argument, plaintiff disingenuously asserts that she is "not contending that Ms. Chalmers responded to the precise solicitation attached to the second amended complaint"; rather, plaintiff has "alleged that Ms. Chalmers received multiple monthly statements con-

taining the fraudulent solicitation and, that in response to the monthly solicitations she obtained the new loan." This statement is simply not true, and borders on a violation of Fed. R. Civ. P. 11. The complaint clearly alleges only one solicitation, and states on information and belief that Chalmers responded to the solicitation attached to the complaint. To the extent that exhibits contradict allegations in the complaint, the exhibits control. *In re first Chicago Corp. Sec. Lit.*, 769 F. Supp. 1444, 1450 (N.D. Ill. 1991). Accordingly, the court concludes that the second amended complaint fails to plead adequately a pattern of racketeering activity. Counts I through III are therefore dismissed.

Finally, defendants have also argued that the second amended complaint again fails to allege a RICO enterprise separate and distinct from the RICO person. In *Moore v. Fidelity Financial Services, Inc.*, 949 F. Supp. 673, 1997 WL 14712 (N.D. Ill. 1997), this court addressed the issue of whether a Section 1962(c) claim can be stated when the RICO persons and enterprises are comprised of interrelated corporate units. The court concluded that in such situations the plaintiff must allege that the RICO person was doing something more than merely conducting its own corporate affairs. Under this court's reasoning in Moore, it concludes that in the instant case plaintiff has failed to allege anything more than individual corporations carrying out their own corporate affairs. Accordingly, the complaint fails to allege RICO enterprises separate and distinct from the RICO persons.

CONCLUSION

For the reasons set forth above, the court concludes that the second amended complaint fails to plead adequately a pattern of racketeering activity and fails to allege a RICO enterprise separate and distinct from the RICO person. Accordingly, Counts I through III are dismissed with prejudice. Because those counts are the only basis for federal jurisdiction, the court dismisses Count IV pursuant to 28 U.S.C. § 1367.

ENTER: February 18, 1997

/s/ Robert W. Gettleman
Robert W. Gettleman
United States District Judge

[Dated September 13, 1996]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

VERNA EMERY, on behalf of herself and all others similarly situated, Plaintiff,	)	
v.	)	No. 94 C 5181
AMERICAN GENERAL FINANCE, INC., AMERICAN GENERAL FINANCE CORPORATION, and JOHN DOES 1-10, Defendants.	)	

SECOND AMENDED COMPLAINT – CLASS ACTION

MATTERS COMMON TO MULTIPLE COUNTS

INTRODUCTION

1. This class action seeks redress for the practices of defendants American General Finance, Inc. and American General Finance Corporation of "flipping," or inducing the refinancing, of loans through deception and concealment. The complaint alleges that this practice violates the federal RICO statute, 18 U.S.C. §1961 (Count I-III) and that the defendants violated various state laws prohibiting unfair and deceptive acts and practices (Count IV).

JURISDICTION

2. This Court has jurisdiction under 18 U.S.C. §1964 and 28 U.S.C. §§ 1331, 1367. Venue in this District is proper because the defendants do business here.

PARTIES

3. Verna Emery is an individual who resides at 1165 N. Milwaukee, #2511, Chicago, Illinois 60622.

4. Defendant, American General Finance, Inc. ("AGFI") is an Illinois corporation which maintains offices at 7746 N. Milwaukee Ave., Niles, Illinois 60714, and 200 W. Adams, #1203, Chicago, Illinois 60606. The registered agent and officer of AGFI is Clay A. Mosberg, 36 S. State Street, Suite 1804, Chicago, Illinois 60603-2607.

5. Defendant, American General Finance Corporation ("AGFC") is an Indiana corporation whose executive offices are located at 601 N.W. 2nd Street, Evansville, Indiana 47708.

6. AGFC is a financial services company which is engaged primarily in the consumer finance and credit insurance business.

7. AGFC, through its subsidiaries, has a branch office network of over 1,300 offices in 40 states, Puerto Rico, and the U.S. Virgin Islands. AGFC regularly does business in Cook County.

8. AGFC is the sole shareholder and parent company of AGFI. AGFI is an instrumentality of AGFC through which it carries out some of its business activities. AGFI regularly does business in Cook County.

9. AGFC is in turn 100% owned by a holding company American General Corporation ("AGC"). AGC and AGFC sell stock and debt securities to the public to finance the activities of AGFC and its subsidiaries. See, AGFC's 10K filing, attached hereto as Exhibit A.

10. AGFI, AGFC and AGC have different officers.

11. All revenue and profits of AGFC's subsidiaries including AGFI, inure to the benefit of AGC and AGFC, and were reported on the financial statements AGC and AGFC issued to the investing public and other financial institutions to borrow money and raise capital.

12. John Does 1-10 are the individuals responsible for devising the policies used each by AGC, AGFC, and AGFI and other subsidiaries.

EMERY'S JULY 14, 1992 TRANSACTION

13. On July 14, 1992, Emery signed a note with AGFI. The amount financed was $1983.81, the finance charge was $1327.08, and the annual percentage rate was 36%. The note was secured by miscellaneous personal property (a typewriter, an amplifier and speakers, a cassette recorder-player, and a television set). Of the amount financed, $51.03 represented the premium for credit life insurance, $120.82 represented the premium for credit disability insurance, $64.42 represented the premium for insurance on plaintiff's personal property, and $6 the premium for purported "non-filing insurance."

14. Exhibit B, attached, is a copy of the note. Exhibit C, attached, is a copy of the Truth in Lending statement. Exhibit D, attached, is a copy of the security agreement.

15. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

SOLICITATION TO BORROW ADDITIONAL MONEY

16. Shortly before January 29, 1993, AGFI solicited Emery to borrow additional money from it by means of communications sent to her through the United States Mail.

17. Exhibit E, attached, is a standard form letter which AGFI sends to borrowers to solicit them to borrow more money.

18. Exhibit E is deceptive and misleading, in that:

a. It purports to be an offer for an additional loan.

b. It uses such terms as "We can lend you money" and "I have money to loan," and suggests that "we could write your check on the spot."

c. It does not disclose that the borrower will refinance his or her existing obligation.

d. It suggests that she would be treated more favorably than a new customer, when a refinancing would result in her being treated less favorably.

19. Emery responded to AGFI's solicitation.

20. Instead of simply making a new loan, AGFI presented Emery with papers for a refinancing of her existing loan with additional funds being advanced.

21. AGFI failed to disclose that it would be far more expensive for Emery to refinance than to simply obtain a new loan.

22. There was no legal prohibition against AGFI simply making a new loan.

23. Upon information and belief, AGFI sends such solicitations to hundreds of customers in each state in which it does business.

EMERY'S JANUARY 29, 1993 TRANSACTION

24. On January 29, 1993, Emery signed a new note with AGFI, with an amount financed of $2,399.83, a finance charge of $1,641.28, an annual percentage rate of 35.96%. The note was secured by miscellaneous personal property (a typewriter, an amplifier and speakers, a cassette recorder-player, and a television set). Of the amount financed, $61.75 represented the premium for credit life insurance, $146.20 represented the premium for credit disability insurance, $77.99 represented the premium for insurance on plaintiff's personal property, and $6 represented the premium for purported "non-filing insurance." Another $96.80 of the amount financed went to "CU for IN," which plaintiff cannot identify.

25. Exhibit F, attached, is a copy of the note. Exhibit G, attached, is a copy of the Truth in Lending statement. Exhibit H, attached, is a copy of the security agreement.

26. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

DISADVANTAGE OF REFINANCING

27. Had AGFI simply made a second loan for the additional amount which Emery was solicited to borrow, it would have cost Emery over $800 less.

28. AGFI did not disclose to Emery, when she entered into the January 29, 1993 transaction, that it would be substantially cheaper for her to simply obtain a second loan instead of refinancing the first loan.

ADDITIONAL VICTIMS

TAWANNA GILL

29. Tawanna Gill ("Gill") is an individual who resides at 3915 Warren Apt. 3A, Bellwood, Illinois 60104.

30. On October 26, 1994, Gill signed a note with AGFI. The amount financed was $1,564.26, the finance charge was $936.03, and the annual percentage rate was 31.96%. The note was secured by miscellaneous personal property (TV, VCR and stereo). Of the amount financed, $38.22 represented the premium for credit life insurance, $90.51 represented the premium for credit disability insurance, $50.99 represented the premium for insurance on plaintiff's personal property, and $6 the premium for purported "non-filing insurance."

31. Exhibit I, attached, is a copy of the note. Exhibit J, attached, is a copy of the Truth in Lending statement. Exhibit K, attached, is a copy of the security agreement.

32. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

33. On information and belief, Gill received a solicitation substantially similar to Exhibit E.

34. In response to the solicitation, Gill approached AGFI about taking out an additional loan. AGFI agreed to make Gill a new loan.

35. On November 21, 1994, Gill signed a new note with AGFI, with an amount financed of $1,604.12, a finance charge of $956.78, an annual percentage rate of 31.96%. The note was secured by miscellaneous personal property (TV, VCR and stereo). Of the amount financed, $39.19 represented the premium for credit life insurance, $92.80 represented the premium for credit disability insurance, and $50.99 represented the premium for insurance on plaintiff's personal property.

36. Exhibit L, attached, is a copy of the note. Exhibit M, attached, is a copy of the Truth in Lending statement. Exhibit N, attached, is a copy of the security agreement.

37. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

38. AGFI led Gill to believe, and she did in fact believe, that Gill was entering into a new loan—not refinancing her existing loan.

39. On March 6, 1995, Gill signed a third note with AGFI, with an amount financed of $2,891.37, a finance charge of $1,65.08, an annual percentage rate of 30.98%. This note was secured by the same miscellaneous personal property that secured the first two notes. Of the amount financed, $69.75 represented the premium for credit life insurance, $165.13 represented the premium for credit disability insurance, and $94.78

represented the premium for insurance on plaintiff's personal property.

40. Exhibit O, attached, is a copy of the note. Exhibit P, attached, is a copy of the Truth in Lending statement. Exhibit Q, attached, is a copy of the security agreement.

41. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

42. Had AGFI simply made a second and third loan for the additional amount which Gill was solicited to borrow, it would have cost Gill substantially less.

43. AGFI did not disclose to Gill, when she entered into the November 21, 1994 or March 6, 1995 transactions, that it would be substantially cheaper for her to simply obtain a second and third loan instead of refinancing the first two loans.

TONIA CARR

44. Tonia Carr ("Carr") is an individual who lives at 8017 S. Wood, Chicago, Illinois 60620.

45. On information and belief, Carr received a solicitation substantially similar to Exhibit E.

46. In response to the solicitation, Carr had her loan refinanced with AGFI when she signed a new note on July 21, 1995. The amount financed was $2,083.26, the finance charge was $936.25, and the annual percentage rate was 35.94%. This note was secured by the same

miscellaneous personal property that secured the first two notes. Of the amount financed, $69.75 represented the premium for credit life insurance, $165.13 represented the premium for credit disability insurance, and $94.78 represented the premium for insurance on plaintiff's personal property.

47. Exhibit R, attached, is a copy of the note. Exhibit S, attached, is a copy of the Truth in Lending statement. Exhibit T, attached, is a copy of the security agreement.

48. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

49. Had AGFI simply made the second loan for the additional amount which Carr was solicited to borrow, it would have cost Carr substantially less.

50. AGFI did not disclose to Carr, when she entered into the November 21, 1994 or March 6, 1995 transactions, that it would be substantially cheaper for her to simply obtain a second and third loan instead of refinancing the first two loans.

BESSIE L. CHALMERS

51. Bessie L. Chalmers ("Chalmers") is an individual who lives at 2211 E. 70 St., Chicago, Illinois 60649

52. On information and belief, Chalmers responded to the solicitation in her monthly statement (Exhibit V), which stated "YOU'RE INVITED TO BLUE RIBBON DAYS IN APRIL. PLEASE STOP BY AND SEE US.

WE'RE SHOWING OUR APPRECIATION FOR ALL OF OUR BLUE RIBBON CUSTOMERS THROUGHOUT APRIL WITH SPECIAL EVENTS AND BLUE RIBBONS SERVICE . . . WE COULD HAVE YOUR LOAN APPROVED IN LESS THAN AN HOUR," and contacted AGFI for a new loan.

53. The fair inference from this notice is that Chalmers, and others who received such notice in their monthly statements, would receive additional money by either an additional loan or addition to the existing account.

54. The fair inference from this notice is that Chalmers, and others who received such notice in their monthly statements, would not receive additional money by "flipping" of the current loan.

55. The notice did not disclose that AGFI actually intended to refinance the existing loans, or that the expense of doing so would greatly exceed the expense of obtaining an additional loan.

56. Chalmers obtained what she believed was a new loan, as indicated on Exhibit U, when, as indicated by Exhibit V, a substantial portion of the loan was used to pay the prior account.

57. The note provided that in the event of prepayment or acceleration, finance charges would be credited using the "Rule of 78's." Refund of unearned premiums on the insurance policies would also be computed using the Rule of 78's.

58. Had AGFI simply made the second loan for the additional amount which Chalmers was solicited to borrow, it would have cost Chalmers substantially less.

59. AGFI did not disclose to Chalmers, when she entered into the March 29, 1995 transaction, that it would be substantially cheaper for her to simply obtain a second loan instead of refinancing the first loan.

POLICIES AND PRACTICES COMPLAINED OF

60. AGC delegated responsibility to AGFC for preparation and approval of solicitations.

61. AGFC participated directly with the subsidiaries in the "flipping scheme" in that AGFC devised the scheme and directed its subsidiaries to implement it. AGFC prepared and approved the solicitations.

62. The subsidiaries, including AGFI, executed the policies and practices adopted by AGFC, with regard to their customers.

63. It was and is the policy and practice of AGFC to:

a. Repeatedly solicit existing loan customers by mail to borrow additional funds.

b. Use communications, such as Exhibits E and U, which lead the customer to believe that he or she is being offered a new and separate loan when in fact, that is not the case.

c. Provide existing loan customers with additional funds through refinancings of the original loans, rather than making new loans, with the result that the cost of the additional funds was inordinately and unconscionably expensive.

d. Concealing from or omitting to reveal to the borrowers the fact that the cost of obtaining addi-

tional funds through refinancing was immensely greater than the cost of obtaining an additional loan.

e. Market loans to mostly working-class borrowers who generally do not understand the computations necessary to determine the comparative costs of a new and separate loan and a refinancing.

64. AGFI and other subsidiaries carried out the policies and practices of AGFC.

65. Defendants have described their target customers as follows:

Target Group Lifestyle Description
Mid to Downscale

Blue-collar craftsman, factory workers, and laborers in low density satellite towns and suburbs of small industrial and manufacturing metros. (Exhibit W)

66. Approximately 60% of the defendants' consumer loans are with what defendants have termed "downscale" consumers. Exhibit W. The defendants' "Target Cluster Index" reveals that the top rated customer profiles include those who:

- Use chewing tobacco
- Listen to religious radio
- TV quiz & audience participation
- Eat at steak houses
- Listen to country music
- Watch TV daytime drama
- Bottom 20% newspaper reading
- Shocks installed by self
- Pro wrestling fans (Exhibit W)

While those persons least likely to do business with the defendants include those who have the following characteristics:

- Belong to a business club
- More than $10,00 stock in other company
- Epicurean magazines
- Go sailing
- American Express card
- Downhill skiers
- Buy traditional/contemporary jazz music
- Played tennis 10+ times last year
- Listen to classical music
- Keogh account (Exhibit W)

67. AGFC subsidiaries' customers do not understand that it is cheaper to obtain a second loan rather than refinance. The computations necessary to determine the comparative cost of the two loans are complex, requiring multiple applications of the "Rule of 78s" and similar rebate formulae (to the loan being refinanced and to each insurance policy issued in connection with that loan). AGFI markets its loans to working-class borrowers who generally do not understand these calculations.

68. These policies and practices continued for many years, continuing through the filing of this lawsuit.

CLASS ALLEGATIONS

69. This claim is brought on behalf of a class. The class consists of all persons who satisfy the following criteria:

a. They obtained credit from AGFI or any subsidiary of AGFC.

b. The AGFC subsidiary solicited them for additional extensions of credit, at a time when they were current on their loans.

c. The additional extension of credit was documented as a refinancing by the AGFC subsidiary.

d. One or more of the loans was outstanding within four years prior to the filing of this action.

70. The class is so numerous that joinder of all members is impractical. The class includes at least several thousand persons.

71. There are questions of law and fact common to the class, which questions predominate over any questions affecting only individual class members. These questions include:

a. Whether the practices complained of are unfair and deceptive or fraudulent business practices.

b. Whether defendants engaged in the scheme complained of.

c. Whether defendants engaged in a scheme or artifice to defraud, within the meaning of 18 U.S.C. §1341.

d. Whether the mails were used in furtherance of the scheme.

e. Whether AGFC conducted or participated in the conduct of the affairs of the enterprise(s) through a pattern of mail fraud, thereby violating 18 U.S.C. §1962(c).

f. Whether AGFI conducted or participated in the conduct of the affairs of the enterprise(s) through a pattern of mail fraud, thereby violating 18 U.S.C. §1962(c).

g. Whether John Does 1-10 conducted or participated in the conduct of the affairs of the enterprise(s)

through a pattern of mail fraud, thereby violating 18 U.S.C. §1962(c).

72. Plaintiff will fairly and adequately protect the interests of the class and subclass. She has retained counsel experienced in handling class actions and actions involving unlawful business practices. Neither plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

73. Plaintiff's claims are typical of the claims of the class and subclass, which all arise from the same operative facts and are based on the same legal theories.

74. A class action is a superior method for the fair and efficient adjudication of this controversy, in that:

a. Most class members are necessitous borrowers who are unaware that their rights have been violated and who lack the resources to pursue individual actions even if they understood their rights were violated.

b. The nature of the practice complained of—the imposition of modest overcharges on large numbers of individuals, resulting in large profits to defendant—is such as to make a class action essential.

c. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g., for securities fraud.

COUNT I - RICO

75. Plaintiff incorporates ¶¶ 1 - 74 by reference.

76. AGFC is a person as defined in 18 U.S.C. § 1961(3).

77. Each of the following is an enterprise as defined in 18 U.S.C. §1961(4): (i) AGC; (ii) the corporate group headed by AGC; (iii) AGFC, AGFI and other affiliated companies directly or indirectly owned by AGFC (the "AGFC Group").

78. The activities of each enterprise affected interstate commerce, in that much of the business they conducted involved interstate transactions. Among other things, many of the loans made by AGFC and its affiliates are made in states other than Illinois. Also, AGFC and AGC raise money on public securities markets and extends financing in approximately 40 states.

79. AGFC conducted or participated in the affairs of each of the enterprises described above through a pattern of mail fraud, in violation of 18 U.S.C. §§ 1962(c) and 1341.

80. AGFC devised and implemented a scheme or artifice to:

a. Repeatedly solicit existing unsophisticated loan customers to request additional funds from AGFI and other AGFC subsidiaries, using the United States Mails for that purpose.

b. Deliberately misleading customers into believing that they were going to receive a new distinct loan.

c. Provide existing loan customers with additional funds through refinancings of the original loans, rather than making new loans, with the result that the cost of the additional funds was inordinately and unconscionably expensive.

d. Concealing from or omitting to reveal to the borrowers the fact that the cost of obtaining addi-

tional funds through refinancing was immensely greater than the cost of obtaining an additional loan.

81. The scheme amounted to scheme or artifice to defraud within the meaning of the mail fraud statute. 18 U.S.C. §1341.

82. The United States mails were used in furtherance of the scheme, as follows:

a. Solicitation materials such as Exhibits E and U were sent to the debtors by mail.

b. Borrowers were invited to and did in fact make their unnecessarily expensive payments by mail. The use of the mails in this regard was foreseeable and intended by defendant AGFC.

83. In the case of plaintiff:

a. Her solicitation materials were received in the mail.

b. She paid by mail.

84. The scheme extended over a period of several years and involved numerous customers such as Emery, Gill, and Chalmers, who all, upon information and belief, received solicitations, and paid on their loans by mail, and thus constituted a "pattern of racketeering."

85. AGFC conducted the affairs of each enterprise defined above through such pattern of racketeering.

86. Plaintiff and each class member was injured in their property as a result of the scheme, in that they were charged unnecessarily expensive finance charges.

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and in favor of the class and against defendant AGFC for:

a. Treble damages.

b. Attorney's fees, litigation expenses and costs.

c. For such other or further relief as the Court deems appropriate.

COUNT II - RICO

87. Plaintiff incorporates ¶¶ 1-86.

88. AGFI is a person as defined in 18 U.S.C. § 1961(3).

89. Each of the following is an enterprise as defined in 18 U.S.C. § 1961(4): (i) AGC; (ii) the corporate group headed by AGC; (iii) AGFC, AGFI, and other affiliated companies directly or indirectly owned by AGFC (the "AGFC Group").

90. The activities of each enterprise affected interstate commerce, in that much of the business they conducted involved interstate transactions. Among other things, many of the loans made by AGFC and its affiliates are made in states other than Illinois. Also, AGFC and AGC raise money on public securities markets and extends financing in approximately 40 states.Among other things, many of the loans made by AGFC and its affiliates are made in states other than Illinois. Also, AGC raises money on public securities markets and extends financing in all states.

91. The business activities of the enterprises include the acquisition and servicing of consumer credit obligations.

92. As described above, AGFI conducted or participated in the affairs of each of the enterprises described

above through a pattern of mail fraud, in violation of 18 U.S.C. §§ 1962(c) and 1341.

93. The United States mails were used on repeated occasions in furtherance of this pattern, in that:

a. Solicitation materials such as Exhibits E and U were sent to the debtors by mail.

b. Borrowers were invited to and did in fact make their unnecessarily expensive payments by mail. The use of the mails in this regard was foreseeable and intended by defendant AGFI.

94. It was the policy and practice of the AGFI, and its affiliates to execute the schemes as described above.

95. Plaintiff and the members of the classes suffered pecuniary injury from these violations.

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and in favor of the classes:

a. For treble damages.

b. For attorney's fees, litigation expenses and costs of suit.

c. For such other or further relief as the Court deems appropriate.

COUNT III - RICO

96. Plaintiff incorporates ¶¶ 1-95. This count is asserted against the Does only.

97. The Does are persons as defined in 18 U.S.C. § 1961(3).

98. Each of the following is an enterprise as defined in 18 U.S.C. § 1961(4): (i) AGC; (ii) the corporate

group headed by AGC; (iii) AGFC, AGFI, and other affiliated companies directly or indirectly owned by AGFC (the "AGFC Group").

99. The activities of each enterprise affected interstate commerce, in that much of the business they conducted involved interstate transactions. Among other things, many of the loans made by AGFC and its affiliates are made in states other than Illinois. Also, AGFC and AGC raise money on public securities markets and extends financing in approximately 40 states. Among other things, many of the loans made by AGFC and its affiliates are made in states other than Illinois. Also, AGC raises money on public securities markets and extends financing in all states.

100. The business activities of the enterprises include the acquisition and servicing of consumer credit obligations.

101. As described above, the Does conducted or participated in the affairs of each of the enterprises described above through a pattern of mail fraud, in violation of 18 U.S.C. §§ 1962(c) and 1341.

102. As described above, the Does conducted or participated in the affairs of each of the enterprises described above through a pattern of mail fraud, in violation of 18 U.S.C. §§ 1962(c) and 1341.

103. The United States mails were used on repeated occasions in furtherance of this pattern, in that:

a. Solicitation materials such as Exhibits E and U were sent to the debtors by mail.

b. Borrowers were invited to and did in fact make their unnecessarily expensive payments by mail.

The use of the mails in this regard was foreseeable and intended by defendant AGFI.

104. It was the policy and practice of the Does, and their affiliates to execute the schemes as described above.

105. On information and belief, this policy and practice was carried out over a period of at least 5 years.

106. Plaintiff and the members of the classes suffered pecuniary injury from these violations.

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and in favor of the classes:

a. For treble damages.

b. For attorney's fees, litigation expenses and costs of suit.

c. For such other or further relief as the Court deems appropriate.

COUNT IV – CONSUMER FRAUD ACT

107. Plaintiff incorporates ¶¶ 1 - 105 by reference.

108. AGFI and AGFC violated some or all of the following statutes prohibiting unfair or deceptive business practices:

Alabama Code §8-19-1
Alaska Statutes § 45.50.471
Arizona Rev. Stat. Ann. §44-1521
Arkansas Stat. Ann §4-88-101
California Business & Professions Code §§17200, 17500, Civil Code §1750
Colorado Rev. Stats. §6-1-101

Connecticut Gen. Stat. Ann. §42-110a
Delaware Code Ann. title 6 §§2531, 2511
D.C. Code Ann. §28-3901
Florida Stat. Ann. §501.201
Georgia Code Ann. §§10-1-370, 390
Hawaii Rev. Stats. §§480, 481A
Idaho Code §48-601
815 Illinois Compiled Statutes 505/1 et seq., 510/1 et seq.
Indiana Code Ann. §24-5-0.5-1
Iowa Code Ann. §714.16
Kansas Stat. Ann. §50-623
Kentucky Rev. Stat. §367.110
Louisiana Rev. Stat. §51:1401
Maine Rev.Stat. Ann. title 5, §206
Maryland Commercial Law Code Ann. §13-101
Massachusetts General Laws ch. 93A
Michigan Compiled Laws Ann. §445.901
Minnesota Stat. Ann. §§8.31, 325D.42, 325D.44, 325F.69
Mississippi Code Ann. §75-24-1
Missouri Rev. Stats. §407.010
Montana Code Ann. §30-14-101
Nebraska Rev. Stat. §§59-1601, 87-302
Nevada Rev. Stat. §§41.600, 598.360
New Hampshire Stat. Ann. §358-A:1
New Jersey Stat. Ann. §56:8-1
New Mexico Stat. Ann. §57-12-1
New York General Business Law §§349-50
North Carolina Gen. Stat. §75-1.1
North Dakota General Stat. §51-15-01
Ohio Rev. Code Ann. §§1345.01, 4165
Oklahoma Stat. Ann., title 15, §751, title 78, §51
Oregon Rev. Stats. §646.605
Pennsylvania Stat. Ann., title 73, §201-1
Rhode Island General Laws §6-13.1-1
South Carolina Code Ann. §39-5-10

South Dakota Cod. Laws Ann. §37-24-1
Tennessee Code Ann. §47-18-101
Texas Business and Commercial Code Ann. §17.41
Utah Code Ann. §§13-2-1, 13-5-1, 13-11-1
Vermont Stats. Ann. title 9, §2451
Virginia Code §59.1-196
Washington Rev. Code Ann. §19.86.010
West Virginia Code, §46A-6-101
Wisconsin Stat. Ann. §100.18, 100.20
Wyoming Stat., §40-12-101

109. Plaintiff believes that the Indiana statute may be applied to the entire class because the policies and practices complained of were devised and implemented from AGFC's headquarters in Indiana. However, plaintiff may rely on some of the other statutes.

110. Defendants engaged in the following unfair and deceptive acts and practices:

a. Pursuant to the policies and practices described above, AGFI enticed persons, including but not limited to plaintiff, to request and accept additional advances on existing loans by misrepresenting material facts concerning the additional advance and treatment of the existing loan.

b. Pursuant to the policies and practices described above, defendants enticed persons, including but not limited to plaintiff, to request and accept additional advances by concealing, suppressing, and/or omitting material facts concerning the additional advance and treatment of the existing loan.

111. These violations involved willful disregard of known legal rights for pecuniary gain, and were malicious.

WHEREFORE, plaintiff requests that the Court enter judgment in his favor and in favor of the class and against AGFI and AGFC for:

a. Compensatory and punitive damages.

b. Attorney's fees, litigation expenses and costs.

c. An injunction halting the practices complained of.

d. Such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/_____
Daniel A. Edelman

Daniel A. Edelman
Cathleen M. Combs
James O. Latturner
Danielle R. Gomez
EDELMAN & COMBS
135 S. LaSalle Street, Suite 2040
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

Knox C. McLaney
MCLANEY & ASSOCIATES
509 S. Court Street
P.O. Box 4276
Montgomery, Alabama 36104
(334) 265-1282
(334) 265-2319